

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SUSAN D RODRIGUEZ,

Plaintiff,

v.

ETHICON, INC. and JOHNSON &
JOHNSON,

Defendants.

Civil Action No. 18-16684 (MAS) (DEA)

MEMORANDUM ORDER

This matter comes before the Court upon Defendants Ethicon, Inc. and Johnson & Johnson's (collectively, "Defendants") Motion for Partial Dismissal. (ECF No. 7.) Plaintiff Susan D. Rodriguez ("Plaintiff") opposed (ECF No. 13), and Defendants replied (ECF No. 14). The Court has carefully considered the arguments and decides the matter without oral argument pursuant to Local Civil Rule 78.1. For the reasons set forth herein, the Court grants Defendants' Motion for Partial Dismissal.

Defendants move for partial dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6), contending, "To the extent Plaintiff intends to pursue her claims under New Jersey Law, the vast majority of her claims (Counts I – VIII, X – XIII) would be subsumed by the New Jersey Product Liability Act. The only other remaining claim—breach of express warranty (Count IX)—should be dismissed because Plaintiff has not pleaded this claim with the specificity required by New Jersey law." (Defs.' Moving Br. 1, ECF No. 8.) In response, Plaintiff states she "agrees that all claims are subsumed by the [New Jersey Product Liability Act]." (Pl.s' Opp'n Br. 4, ECF No. 13.) She further states that Defendants' motion regarding the breach of express warranty claim is moot because "Plaintiff will not be proceeding with it." (*Id.*) The Court, therefore, grants

Defendants' Partial Motion to Dismiss. (ECF No. 7.) The Court dismisses with prejudice Count IX—Breach of Express Warranty, and further grants Plaintiff leave to amend the Complaint to combine the remaining counts into a single New Jersey Product Liability claim. Finally, the Court finds a choice of law analysis premature at this stage of the litigation.

Accordingly,

IT IS on this 28th day of May 2019 **ORDERED** that:

1. The Court **GRANTS** Defendants' Partial Motion to Dismiss. (ECF No. 7.)
2. Count IX—Breach of Express Warranty—of Plaintiff's Complaint (ECF No. 1) is dismissed with prejudice.
3. By **June 28, 2019**, Plaintiff shall file an Amended Complaint that combines the remaining counts under a single New Jersey Product Liability claim.

s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE